

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARIA JESUS ANELLO,

Plaintiff,

v.

NANCY A. BERRYHILL,

Defendant.

Case No. [18-cv-00070-DMR](#)

**ORDER GRANTING PLAINTIFF
LEAVE TO FILE A THIRD AMENDED
COMPLAINT**

Re: Dkt. No. 71

Defendant Nancy A. Berryhill, Acting Commissioner of the Social Security Administration filed a motion to dismiss Plaintiff Maria Anello's second amended complaint ("SAC") which was set for hearing on May 23, 2019. [Docket No. 65.] On May 20, 2019, after the parties had fully briefed the motion, the court vacated the hearing pursuant to Civil Local Rule 7-1(b). [Docket No. 70.] The next day, Plaintiff filed a motion requesting leave to file a response to Defendant's reply brief, in which she states that she has visited the Pro Bono Project seeking "legal advice on how to cure any defects in [her] claim," and that she was prepared to offer additional arguments and facts in support of the SAC at the now-vacated hearing on the motion to dismiss. [Docket No. 71.] Defendant has not filed a response to Plaintiff's motion.

Plaintiff describes facts in her motion for leave to file a response that have not been alleged in previous versions of her complaint or any other filing. The court orders the following: Defendant's motion to dismiss the SAC is denied without prejudice. **The court grants Plaintiff one final opportunity to plead her best case in a third amended complaint that includes all relevant facts supporting her claims. Any third amended complaint must be filed by June 14, 2019 and must be a complete statement of Plaintiff's claims.** Plaintiff may not refer to or incorporate by reference any prior filings, and may not re-plead any claims that have been dismissed with prejudice. *See Lacey v. Maricopa Cty.*, 693 F.3d 896, 928 (9th Cir. 2012) ("For

claims dismissed with prejudice and without leave to amend, we will not require that they be
repled in a subsequent amended complaint to preserve them for appeal.”).

IT IS SO ORDERED.

Dated: May 29, 2019

